

TO: All Concerned Persons

- COMMENT 1:** Two people stated they would have no objection to the proposed fee increases if they and other licensed plumbers who regularly pay license fees as well as the costs of continuing education, plumbing permits, inspections, apprenticeships, workers' compensation, unemployment and general liability insurance, and apprentice and journeyman wages, received protection from the board against those who avoid such costs by practicing without licenses. The commenters stated the board is not doing enough to adequately address the unlicensed practice of plumbing or is just unresponsive to unlicensed practice complaints.

RESPONSE 1: The board agrees that the unlicensed practice of plumbing is a serious problem. The board does investigate unlicensed practice complaints and issues cease and desist orders to individuals found practicing plumbing unlawfully. Board inspectors regularly issue "citations and fines" to unlicensed persons performing plumbing work. However, the incidence of unlicensed plumbing practice continues to rise. The board has formed a committee to review this problem and report back on possible legislative, public education, and other solutions. The board intends to seek misdemeanor criminal prosecutions of persons engaging in unlicensed practice and to identify circumstances when the board will seek district court civil injunctions. All recourses pursued by the board must be undertaken within statutory and budgetary constraints.

COMMENT 2: Thirty-nine persons signed a written comment opposing the proposed fee increase because the increase is more than double the board's projected budget shortfall. One commenter questioned the legality of such an increase. Commenters compared the plumbers' renewal fees with the lesser renewal fees of architects, pharmacists, electricians, public accountants, professional engineers, dentists, and physicians. One commenter asserted the

median wage for plumbers is far less than the wage for the other named occupations and professions with the exception of electricians.

RESPONSE 2: The board had an end-of-month cash balance for April 2007 of \$88,619.46. By the end of June 2008, without a fee increase, it will have a projected negative balance (i.e., a budget shortfall) of \$52,211. Thus it would have expended \$140,830.46 or \$52,211 more than its projected revenue, not a total of only \$52,211. The proposed fee increase is not double what the board needs to operate. The \$118,020 revenue that is expected to be generated by the fee increase will merely offset most board expenses.

Boards are statutorily prohibited from accumulating a cash balance of more than twice its annual legislative appropriation (spending authority). In the unlikely event the board ever reached that cap, the department would abate plumbers' renewal fees in whole or in part until the surplus was depleted. Otherwise, the surplus would revert to the state's general fund. There is no advantage to the board to collect more fees than needed to meet expenses.

Professional and occupational licensing boards receive no funding from the legislature. By law, boards must set their fees commensurate with their costs and they must be wholly self-sufficient. The proposed fees are commensurate with the board's costs and thus, are legal in all respects. Fees are not and cannot be set based on the income that licensees can expect to earn in their chosen field.

Comparing plumbers' renewal fees with other occupations or professions is not instructive. The primary source of revenue for boards is their renewal fees. Thus, boards with larger numbers of licensees can set renewal fees lower while boards with fewer licensees must set theirs higher to meet operating expenses. The Board of Plumbers has 1368 licensees. In contrast, the Board of Medical Examiners has seven licensing categories and approximately 9200 licensees (including physicians, EMTs, physician assistants, nutritionists, acupuncturists, and others); the Board of Pharmacy has approximately 3025 licensees (including pharmacists, pharmacies, pharmacy technicians, mail order pharmacies, and wholesale distributors); the Board of Public Accountants has 1982 licensees; the Board of Professional Engineers and Professional Land Surveyors has 4373 licensees; the Board of Dentistry has 1188 licensees; and the State Electrical Board has 3967 licensees (including electricians and electrical contractors).

Further, unlike most boards, the Board of Plumbers and the State Electrical Board employ and pay expenses for two full time inspectors who travel the state checking licensure compliance and investigating unlicensed practice. The expenses include wages and benefits, fuel, motor pool vehicle, per diem, and lodging.

COMMENT 3: One commenter suggested that the board charge master plumbers of record a separate fee, keep the fines collected from violators to cover board costs instead of depositing the fines to the general fund, and issue maximum fines for violations and/or obtain reimbursement for the time and expense of prosecuting violators.

RESPONSE 3: The board acknowledges the suggestion, but has no immediate plan to establish a separate fee for master plumbers of record for plumbing businesses.

To keep fine money rather than deposit it to the general fund would require legislative authorization. In addition, if fines were a source of the board's operating revenue, there would be legal due process implications, i.e., the appearance that decisions regarding discipline are or could be based on budget considerations rather than solely on merit.

In determining what sanction to impose, the board is required by law to first consider what is necessary to protect or compensate the public. Not every violation may warrant the maximum allowable fine of \$1000. To assess the costs of prosecution against violators would require legislative authorization.

4. The board has amended ARM 24.180.401 exactly as proposed.

BOARD OF PLUMBERS
TIM REGAN, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 25, 2007